

## MINUTES

### **INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA**

**June 25, 2004**

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on June 25, 2004, at the offices of Reed, Smith, Crosby, Heafey in Oakland, California and by video conference at Orrick, Herrington & Sutcliffe, LLP in Sacramento, California.

The following members attended the meeting in person, by video conference or by telephone:

Peter Bronson  
Paul Pascuzzi  
Radmila Fulton  
Molly Baier  
David Bertenthal  
Mike Buckley  
Elizabeth Berke-Dreyfuss  
Lynn Ernce  
Lisa Fenning  
Bob Franklin  
Judy Gibbs  
Eve Karasik  
Michael Koch  
Howard Kollitz  
Greg Lunt  
Donna Parkinson  
Mark Porter  
Dan Schechter  
Russell Clementson (Ex Officio)  
Sandy Lavigna (Ex Officio)  
Rob Harris (Ex Com Liaison)

The following members did not attend the meeting: Brian Davidoff, Tracy Schweitzer, David Shemano, Cliff Stevens, Geraldine Valdez, and Colin Wied.

Peter Bronson called the meeting to order at approximately 10:00 a.m.

**1. Approval of Minutes: April 23, 2004.**

The minutes of the April 23, 2004 meeting were approved without incident.

## **2. Membership.**

Peter Bronson reported that the chair and vice chair nominations for next year were approved by the Executive Committee. Peter will serve as chair and Paul Pascuzzi will serve as vice chair. Congratulations to them. The position of secretary for next year is still under consideration. The Committee discussed and considered the seven applicants for the nine vacant positions on the Committee for next year in terms of qualifications and diversity in geography, gender, and practice area, among other things. The Committee voted to approve the applications of Maria Pum, Ed Tredinnick, Malhar Pagay, and Sharon Dutton.

## **3. Meeting Schedule.**

No change in the meeting schedule for the balance of the year.

## **4. Budget.**

Nothing to report at this meeting.

## **5. Subcommittee—Assignments.**

Appointments to subcommittees and subcommittee chairs were tabled for further discussion at later meetings.

## **6. Programs and Education Subcommittee Report.**

### **A. Yosemite “Open Meeting Debrief.”**

Paul Pascuzzi reported on the May 2004 Open Meeting held in conjunction with the California Bankruptcy Forum. The meeting was attended by Geraldine Valdez, David Shemano, Radmila Fulton, and Mike Koch. Numerous bankruptcy lawyers stopped by the meeting to inquire about membership on the Committee.

### **B. October 2004 Annual Meeting.**

Radmila Fulton reported on the status of the Committee’s two programs at the October 2004 Annual Meeting. Mark Porter is in charge of a program on asset sales under Bankruptcy Code Section 363. Mark, Robert Shenfeld and a Bankruptcy Judge from the Northern District will be on the panel. Mark circulated an outline for the program and solicited comments from the Committee. Russell Clementson, Sandy Lavigna and Donna Parkinson are in charge of the program on bankruptcy fraud. The panelists for the fraud program will be Steve Katzman from the U.S. Trustee’s Office, Donna Parkinson, Lisa Fenning if she can, or possibly Judge Maureen Tighe as a backup, and Randall Lee. The deadline for written materials for these programs is August 10, 2004.

**C. Reimbursement for Speakers Dispute.**

Rob Harris reported that the State Bar rules for reimbursement of speaker expenses is unclear. Rob will investigate further and convey the information to Peter Bronson, Geraldine Valdez, Radmila Fulton and Sandy Lavigna.

**7. Website Report and Constituency Outreach Project and Report from Constituency/Outreach/Website Subcommittee.**

Bob Franklin reported for the website, et al. subcommittee. Bob reported that the website is up to date with all changes that have been requested. Bob is working on the short statement advertising its website for publication in the Business Law News. Rob Harris noted that the Executive Committee tracks the use of list serves and the more they are used the better. The Committee is continuing its ongoing efforts to solicit emails for e-blast lists. The Committee also discussed “tele-seminars” whereby a panel presents a seminar and attendees can attend by phone and call in questions to the panel. Liz Berke-Dreyfuss reported on the general cost and other logistics. Rob noted that the State Bar has a system set up already to conduct “tele-seminars” on an economical basis and that it would be looked upon very favorably if the Committee conducted one. Liz will contact Susan Orloff about the details so the Committee can begin planning a tele-seminar.

**8. Progress Reports on Current Projects from Legislation Subcommittee.**

**A. Badges of Fraud ALP Status.**

Dan Schechter reported that the bill to insert the common law badges of fraud back into the statute (SB 1408) has been enacted. Congratulations to Dan and Judy Gibbs (with an assist from Rob Harris) for a job well done.

**B. New ALP re Attachment Liens.**

Dan Schechter circulated a memo discussing the problem of an attachment lien not being the basis for a secured claim in a bankruptcy case until the creditor obtains a judgment, as the Ninth Circuit held in *In re Southern California Plastics, Inc.*, 165 F.3d 1243 (9<sup>th</sup> Cir. 1999). Dan’s memo suggests that California statutory law should be amended to provide that an order allowing the attaching creditor’s claim in a bankruptcy proceeding is equivalent to a “judgment,” solely for purposes of perfection of a California attachment lien. The Committee is to review the memo further and discuss this matter at the next meeting.

**C. New Projects.**

i. Model Real Estate Order and Findings. Paul Pascuzzi revised the order and findings pursuant to the discussions at the April Committee meeting. Geraldine will have them reviewed by her real estate contacts.

ii. CCP §§ 697.530 and 708.110 et seq. Peter Bronson reported on these projects, which deal with the problems of perfecting a California judgment lien against a foreign corporation and secret liens. Peter ascertained that the UCC Committee is interested in evaluating these issues. Peter will work with the UCC Committee to

identify the issues and solutions to the problems with the statutes and/or educating the bar about these provisions.

iii. H.R. 975 (Bankruptcy Reform Act). Nothing new to report. The bill is not dead, but it is not moving either.

## **9. Publications Subcommittee Current Projects Report.**

Peter Bronson reported that he is drafting the mandatory article for the summer issue of the Business Law News, which was due by June 30, 2004. Possible volunteers for the next article and the topics are as follows: Geraldine Valdez and Paul Pascuzzi, the model real estate order and findings; and Mark Porter, sales. Geraldine will work on the mandatory California Legislative Bulletin Annual Report.

## **10. Legislation Subcommittee's New Bill Report.**

### **A. State Bills.**

Greg Lunt reported that AB 3103 regarding attorney's liens has been referred to the judiciary committee.

### **B. CLRC.**

With regard to the California Law Review Commission survey on the uses of the assignment for benefit of creditor provisions, Mark Porter reported that the survey is ready to be distributed by list serve. Mike Koch had nothing new to report regarding the CLRC memo discussing proposed revisions to the mechanics lien law. Mike is to continue to monitor the project and report to the Committee.

### **C. Federal Bills.**

Regarding the proposed revisions to avoidance law in SB 1970 and SB 832, a memo prepared by Mark Porter with assistance from Paul Pascuzzi was circulated with the materials. Mark is attempting to contact a lawyer who has experience in executive compensation to consult with on this project. Greg Lunt reported no further change in status on HR 2120, SB 1264 and SB 1331.

### **D. State Bulk Sales Laws.**

At the February meeting, the Committee voted to join in the UCC Committee's report recommending the repeal of the bulk sales laws. Peter Bronson will follow up with Geraldine Valdez on the status of her inquiries as to the best manner in which to indicate the ILC's support for the UCC Committee's report.

## **11. Update from Ex-Comm Liaison.**

Rob Harris gave the report from the Executive Committee. Rob noted that the Legislation Subcommittee should be checking the Conference of Delegate Resolutions to see if there is anything on which the Committee should comment.

**12. New Business.**

Mark Porter raised the issue of how to attract the most qualified applicants for Committee membership. Rob Harris noted that the best way is to target specific lawyers of whom Committee members are aware are well qualified and that would provide diversity to the Committee. Judy Gibbs inquired whether anyone had any experience with Section 523(a)(19), a Sarbanes-Oxley nondischarge provision. It was also suggested that the Committee discuss whether other “ex-officio” members would be desirable, such as someone from the Internal Revenue Service.

**13. Adjournment.**

The meeting was adjourned at approximately 12:15 p.m.

Respectfully submitted,  
Paul J. Pascuzzi